

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR NO 04-00243 DAE
)	
Plaintiff,)	
)	
vs.)	
)	
MICHAEL FURUKAWA,	(01))	
WESLEY UMEMURA,	(02))	
DENNIS HIROKAWA, and	(03))	
RICHARD OKADA,	(04))	
)	
Defendants.)	
_____)	

ORDER DENYING DEFENDANT'S MOTION TO STRIKE
SURPLUSAGE FROM INDICTMENT AS MOOT

The Court heard Defendant's Motion on February 6, 2006. Assistant United States Attorneys William L. Shipley, Lawrence Goya and Larry Tong appeared at the hearing on behalf of the Government; Dana Ishibashi, Esq., appeared at the hearing on behalf of Defendant Richard Okada; and Howard Luke Esq., appeared at the hearing on behalf of Defendant Michael Furukawa. After reviewing the motion and the supporting and opposing memoranda, the Court DENIES Defendant's Motion to Strike Surplusage From Indictment as moot.

BACKGROUND

On July 28, 2004, Defendant Richard Okada (“Defendant”) was indicted for “Conspiracy to commit offense or to defraud United States,” pursuant to 18 U.S.C. § 371 (Count 1 of a 49-Count Superseding Indictment). Count 1 alleges that Defendant, along with his co-defendants,

did willfully and knowingly conspire with each other and with others [sic] persons both known and unknown . . . to commit an offense against the United States, that is, knowingly to devise, and intending to devise, a scheme and artifice to defraud and to obtain money from the State of Hawaii by means of materially false and fraudulent pretenses, representations and promises, as well as omissions of material facts, and for the purpose of executing the scheme and artifice, and attempting to do so, to cause certain items to be delivered by United States mail, in violation of Title 18, United States Code, section 1341.

(Indictment, at ¶ 5, pp.6-7.)

Additionally, the sentencing allegations of the Indictment contain the following with respect to Defendant: 1) Defendant was one of the “leaders and organizers of criminal activity that involved five or more participants or was otherwise extensive” (Id. at p. 55); 2) Defendant “abused [his] position[] of public trust in a manner that significantly facilitated the commission or concealment of the offense” (Id.); and 3) Defendant “willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice through the course of the

investigation or prosecution, and such conduct related to Count 1 of this Superseding Indictment.” (Id. at p. 55-56.)

On October 15, 2004, Defendant filed the instant Motion to Strike Surplusage From Indictment (“Motion”). He withdrew the Motion on February 7, 2005 and thereafter reinstated the Motion on August 8, 2005. Co-defendant Wesley Uemura filed a Joinder to Defendant’s Motion but withdrew the Joinder on February 4, 2005. On December 22, 2004, Government Plaintiff United States of America (“Government”) filed a Memorandum of Points and Authorities in Response to Defendant Okada’s Motion to Strike Surplusage (“Opposition”). At the hearing, co-defendant Michael Furukawa joined in Defendant’s Motion.

DISCUSSION

Defendant moves to strike the sentencing allegations referring to him on the grounds that they are prejudicial and inflammatory and not relevant, necessary or material to the charge in Count 1. At the hearing, Government stated that it is no longer necessary to include in the Indictment the sentencing allegations that Defendant seeks to strike in light of United States v. Booker, 534 U.S. 220 (2005). Therefore, the Court will deny Defendant’s Motion as moot.

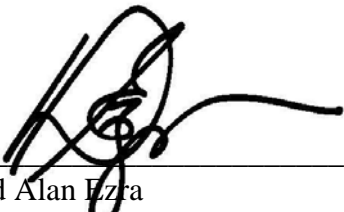
CONCLUSION

For the reasons stated above, the Court DENIES Defendant's Motion to Strike Surplusage From Indictment as moot.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, February 7, 2006.





David Alan Ezra
United States District Judge

United States of America v. Michael Furukawa et al., CR No. 04-00243 DAE;
ORDER DENYING DEFENDANT'S MOTION TO STRIKE SURPLUSAGE
FROM INDICTMENT AS MOOT